

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ROBERT J. LARSON,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 07-CV-7283
)	
PEAK6 INVESTMENTS, LP, ARTHUR)	Judge Marvin E. Aspen
JOHN HASS, III, NANCY MCKINNEY AND)	
DANIEL MAX ROSENTHAL,)	
)	
Defendants.)	

**INDIVIDUAL DEFENDANTS' REPLY IN SUPPORT OF
THEIR MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

Defendants Arthur John Hass, III, Nancy McKinney and Daniel Rosenthal, through their attorneys, submit the following Reply in Support of their Motion to Dismiss Plaintiff's Complaint.

ARGUMENT

On December 28, 2007, Plaintiff filed a Complaint alleging that his former employer and three of its employees subjected him to age discrimination in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.* (the "ADEA"). On March 6, 2008, Individual Defendants Hass, McKinney and Rosenthal moved to dismiss Plaintiff's Complaint against them on the grounds that there is no individual liability under the ADEA because an individual does not constitute an "employer" for purposes of the statute. See e.g., Horwitz v. Bd. Of Educ., 260 F.3d 602, 610 n.2 (7th Cir. 2001) (noting there is no individual liability under the ADEA); Cheng v. Benson, 358 F. Supp. 2d 696, 700 (N.D. Ill. 2005) ("there is no individual or supervisor liability under the ADEA"); Whitchurch v. Apache Prods. Co., 916 F. Supp. 809, 812 (N.D. Ill. 1996).

In his March 27, 2008 Response to the Individual Defendants' motion, Plaintiff *conceded* that Defendants' legal citations regarding the absence of individual liability under the ADEA were

accurate, but asked the Court to ignore that controlling law and include Hass, McKinney and Rosenthal “as Individual Defendants in this Legal Action of mine.” (Resp. at 1, 3). Specifically, Plaintiff argues that the Court should impose liability on these individuals under the ADEA because: (1) he was allegedly terminated by them personally rather than by the “artificial person” Defendant PEAK6; (2) they were named in his administrative charges before the Equal Employment Opportunity Commission and the Illinois Department of Human Rights; (3) they are purportedly subject to various federal securities industry regulations; and (4) they allegedly presented him with a proposed separation agreement upon the termination of his employment. (Resp. at 2). Contrary to Plaintiff’s argument, however, none of these assertions create individual liability under the ADEA. Accordingly, Plaintiff fails to state claims against Hass, McKinney or Rosenthal upon which relief can be granted.

CONCLUSION

For all the foregoing reasons, Defendants Arthur John Hass, III, Nancy McKinney and Daniel Rosenthal respectfully requests that this Court grant their Motion to Dismiss Plaintiff’s Complaint against them.

Respectfully submitted,

ARTHUR JOHN HASS, III, NANCY
MCKINNEY and DANIEL MAX ROSENTHAL

s/Thomas J. Posey

One of Their Attorneys

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Dated: April 7, 2008

CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2008, I electronically filed the foregoing **INDIVIDUAL DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFF'S COMPLAINT** with the Clerk of the Court using the CM/ECF system and sent notification of such filing to the party listed below by depositing a true and correct copy of same, postage prepaid, in the U.S. Mail chute at 300 South Wacker Drive, Chicago, Illinois, prior to 5:00 p.m. on this 7th day of April, 2008:

Mr. Robert J. Larson
5334 North Kenmore
Apartment No. 1N
Chicago, Illinois 60640

s/Thomas J. Posey

Thomas J. Posey

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